

REMARKSA. Background

Claims 39-41, 43-45, 47-67, and 89-108 were pending in the application at the time of the Office Action. The Office Action rejected claims 89-94 and 108 as being obvious over cited prior art. Claims 39-41, 43-45, 47-67, and 95-107 were allowed. By this response applicant has not amended the claims. As such, claims 39-41, 43-45, 47-67, and 89-108 are again presented for the Examiner's consideration in light of the following remarks.

Initially, applicant would like to thank the examiner for the courtesy of the telephone interview conducted on April 21, 2004. During the interview, it was discussed why claims 89 and 108 are not obvious over U.S. Patent No. 4,865,044 to Wallace et al. in view U.S. Patent No. 5,050,612 to Matsumura. These arguments are presented below in greater detail. The examiner stated that she would make a determination as to whether the claims distinguish over the prior art after applicant submits the arguments in a formal response.

B. Rejection on the Merits

Paragraph 1 of the Office Action states that claims 1-38 and 68-88 are withdrawn in view of the prior election. Applicant notes that claims 1-38 and 68-88 were "cancelled" in the response mailed December 12, 2003.

Paragraphs 2 and 3 of the Office Action rejected claims 89-94 and 108 under 35 USC § 103(a) as being obvious over U.S. Patent No. 4,865,044 to Wallace et al. in view U.S. Patent No. 5,050,612 to Matsumura. The Office Action asserts that the Wallace patent teaches a temperature sensing device comprising: "an ear tag having an attachment portion to extend through a body part of an animal" and "one or more animal temperature sensors disposed on/in the attachment portion for

contact with the animal during use." In support thereof, the Office Action references Figure 2; columns 4-5, lines 54-2; column 5, lines 16-35; and columns 6-7, lines 65-46. Applicant respectfully disagrees.

In general, the Wallace patent discloses a temperature-sensing system for cattle. That is, by measuring the temperature of a cow, it can be determined whether the cow has a fever and is thus ill. If so, the cow can then be appropriately treated. The Wallace patent discusses, however, that "studies have shown that if ambient temperature increases, normal internal cattle body temperature also increases." Column 4, lines 41-43. Accordingly, the system of the Wallace patent measures the internal body temperature of the cow and also the ambient temperature. These values are then compared to determine whether the cow actually has a fever or whether the change in temperature is due to the change in ambient temperature.

Specifically, with regard to Figure 2, the Wallace patent discloses a tag 1 that is "attached to the cow's ear 2 as if it were an earring, being small enough not to distract the cow or cause problems. The device includes a probe 3 extending into the internal ear for exposure to the internal body temperature of the cow; in the case of the first version of the invention including the fever detector, an additional probe not specifically shown in FIG. 1 is provided on the surface of tag 1 for exposure to ambient temperature." Column 4, lines 59-67.

In view of the foregoing and the depiction in Figure 2, it is clear that tag 1 of the Wallace patent includes: (1) a tag body, (2) a fastener for connecting the tag body to a cow's ear "as if it were an earring," (3) a probe 3 that extends from the tag body and is designed to be inserted into the internal ear of the cow to measure the internal body temperature of the cow, and (4) a probe mounted on the tag body that is designed to measure the ambient temperature. The Wallace patent is silent as to the structure of the fastener used to connect the tag body to the cow's ear other than to say that the

tag is connected "as if it were an earring." It is clear, however, especially from the depiction in Figure 3, that the fastener is separate from the probe 3 and the probe for measuring the ambient temperature.

Accordingly, even assuming *arguendo* that the Wallace patent discloses a "tag having an attachment portion to extend through a body part of an animal," the Wallace patent does not disclose or suggest "one or more animal temperature sensors disposed on/in the attachment portion for contact with the animal during use and providing an output indicative of temperature," as recited in claim 89. That is, the Wallace patent does not disclose or suggest having a sensor disposed on or in the fastener used to attach the tag body to the ear of the cow.

Furthermore, there is no motivation to modify tag 1 of the Wallace patent so that a sensor is disposed on or in the fastener thereof. Probe 3 is specifically designed to be inserted into the "internal ear" of the cow to measure the internal body temperature of the cow. The only other sensor is the probe mounted on the tag body to measure the ambient temperature. It would not be obvious to position this latter probe on the fastener of the Wallace tag since the probe would then be in contact with the animal and thus destroy its intended function of measuring the ambient temperature.

The Matsumura patent discloses a device which in part measures the body temperature of a human. As depicted in Figure 8, the device includes a temperature sensor which is rested against the body of a patient. Straps are used to secure the device in place. The Matsumura patent does not disclose a "tag" and clearly does not disclose or suggest a "tag having an attachment portion to extend through a body part of an animal," as recited in claim 89. Furthermore, the Matsumura patent does not disclose or suggest "one or more animal temperature sensors disposed on/in the

attachment portion for contact with the animal during use and providing an output indicative of temperature," as recited in claim 89.

In view of the foregoing, applicant respectfully submits that claim 89 is not obvious over the Wallace patent in view of the Matsumura patent.

Claims 90-94 depend from claim 89 and thus incorporate the limitations thereof. As such, applicant respectfully submits that claims 90-94 are distinguishable over the cited prior art for at least the same reasons as discussed above with regard to claim 89.

Concerning claim 108, applicant respectfully submits that claim 108 is not obvious over the cited prior art for substantially the same reasons as discussed above with regard to claim 89. Specifically, applicant respectfully submits that neither the Wallace patent nor the Matsumura patent disclose or suggest "a tag having an attachment portion to extend through a body part of an animal, the tag incorporating an indicator means" and "one or more animal temperature sensors disposed on/in the attachment portion for contact with the animal during use," as recited in claim 108.

No other objections or rejections are set forth in the Office Action.

C. Conclusion

In view of the foregoing, applicant respectfully requests the examiner's reconsideration and allowance of claims 39-41, 43-45, 47-67, and 89-108 as presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 22 day of April 2004.

Respectfully submitted,



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